

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HEADWATER RESEARCH LLC,

Plaintiff,

v.

T-MOBILE USA, INC. AND SPRINT CORP.,

Defendants.

Case No. 2:23-cv-00377-JRG-RSP

(Member Case Under -379 Action)

JURY TRIAL DEMANDED

HEADWATER RESEARCH LLC,

Plaintiff,

v.

T-MOBILE USA, INC. AND SPRINT CORP.,

Defendants.

Case No. 2:23-cv-00379-JRG-RSP

(Lead Case)

JURY TRIAL DEMANDED

**PLAINTIFF HEADWATER RESEARCH LLC'S SUR-REPLY TO
DEFENDANTS' MOTION TO STAY PENDING *INTER PARTES* REVIEW
AND RELATED MANUFACTURER CASES**

T-Mobile's Motion is premature, and T-Mobile has failed to meet its burden to show that a stay is warranted. The Motion should be denied. Indeed, the Court just this morning denied a nearly identical motion to stay filed by the same counsel in a related case, even before Headwater filed its sur-reply there. *See Headwater Research LLC v. Cellco P'ship, et. al*, Case. No. 2:23-cv-00352-JRG-RSP ("Verizon Case"), Dkt. No. 109 ("After consideration, the motion is denied as premature."). The same reasoning and result should apply here.

T-Mobile's Motion is nearly identical to Verizon's motion to stay. *Compare* Dkt. No. 93 (the "Motion") *with* Verizon Case, Dkt. No. 93. Verizon and T-Mobile are represented by the same

counsel at Gibson Dunn. *Id.* Headwater filed a nearly identical opposition. *Compare* Dkt. No. 98 with Verizon Case, Dkt. No. 100. T-Mobile filed a nearly identical reply in support of its motion to stay as the reply filed by Verizon. *Compare* Dkt. No. 102 with Verizon Case, Dkt. No. 105.

This morning, the Court denied Verizon’s motion to stay before Headwater filed its sur-reply. Verizon Case, Dkt. No. 109 (“Verizon Order”).¹ In that order, the Court noted that “[a]s of the date of this Order, the Board has still not issued a decision regarding institution of six of the seven IPR petitions.” *Id.* at 2. The same is true here. *See* Dkt. Nos. 93, 98, 102. In the Verizon Order, the Court held:

Verizon has not met its burden to show that a stay is appropriate as, most importantly, it did not show that the Board granted its petitions for IPR on all asserted patents and, therefore, claims. Since Verizon did not show there is a reasonable likelihood that the Board will invalidate all the asserted claims, its Motion fails.

Verizon Order at 3. The Court explained that this does not simplify the issues in this case, and “this factor is the decisive one.” *Id.* at 3. Because the facts and arguments raised by T-Mobile here are the same as those raised by Verizon, the same reasoning applies here, and the same result should follow.

Headwater respectfully requests that the Court deny T-Mobile’s Motion.

¹ Following entry of the Verizon Order, Headwater requested that T-Mobile, represented by the same counsel as Verizon, stipulate that the same outcome as the Verizon Order applies here. T-Mobile’s counsel did not respond. Headwater likewise requested that AT&T stipulate to the same outcome because its motion to stay was likewise based on similar facts and arguments. AT&T responded and filed an Unopposed Motion to Withdraw its Opposed Motion to Stay. *Headwater Research LLC v. AT&T Inc., et. al*, Case. No. 2:23-cv-00397-JRG-RSP, Dkt. No. 81.

Dated: November 8, 2024

Respectfully submitted,

/s/ Marc Fenster

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**ATTORNEYS FOR PLAINTIFF,
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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2024, I served Defendants via electronic mail.

/s/ Jason Wietholter
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